

SECOND REGULAR SESSION

HOUSE BILL NO. 2051

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES CURTMAN (Sponsor), JUSTUS AND POGUE (Co-sponsors).

6000L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 34.040, 34.042, 34.044, and 34.047, RSMo, and to enact in lieu thereof four new sections relating to state purchases.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 34.040, 34.042, 34.044, and 34.047, RSMo, are repealed and four
2 new sections enacted in lieu thereof, to be known as sections 34.040, 34.042, 34.044, and 34.047,
3 to read as follows:

34.040. 1. All purchases in excess of [three] **ten** thousand dollars, **adjusted for**
2 **inflation based on the dollar's value in 2013**, shall be based on competitive bids, except as
3 otherwise provided in this chapter.

4 2. On any purchase where the estimated expenditure shall be [twenty-five] **one hundred**
5 thousand dollars or over, **adjusted for inflation based on the dollar's value in 2013**, except
6 as provided in subsection 5 of this section, the commissioner of administration shall:

7 (1) Advertise for bids in at least two daily newspapers of general circulation in such
8 places as are most likely to reach prospective bidders and may advertise in at least two weekly
9 minority newspapers and may provide such information through an electronic medium available
10 to the general public at least five days before bids for such purchases are to be opened. Other
11 methods of advertisement, which may include minority business purchase councils, however,
12 may be adopted by the commissioner of administration when such other methods are deemed
13 more advantageous for the supplies to be purchased;

14 (2) Post a notice of the proposed purchase in his or her office; and

15 (3) Solicit bids by mail or other reasonable method generally available to the public from
16 prospective suppliers. All bids for such supplies shall be mailed or delivered to the office of the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 commissioner of administration so as to reach such office before the time set for opening bids.

18 3. The contract shall be let to the lowest and best bidder. The commissioner of
19 administration shall have the right to reject any or all bids and advertise for new bids, or purchase
20 the required supplies on the open market if they can be so purchased at a better price. When bids
21 received pursuant to this section are unreasonable or unacceptable as to terms and conditions,
22 noncompetitive, or the low bid exceeds available funds and it is determined in writing by the
23 commissioner of administration that time or other circumstances will not permit the delay
24 required to resolicit competitive bids, a contract may be negotiated pursuant to this section,
25 provided that each responsible bidder who submitted such bid under the original solicitation is
26 notified of the determination and is given a reasonable opportunity to modify their bid and
27 submit a best and final bid to the state. In cases where the bids received are noncompetitive or
28 the low bid exceeds available funds, the negotiated price shall be lower than the lowest rejected
29 bid of any responsible bidder under the original solicitation.

30 4. All bids shall be based on standard specifications wherever such specifications have
31 been approved by the commissioner of administration. The commissioner of administration shall
32 make rules governing the delivery, inspection, storage and distribution of all supplies so
33 purchased and governing the manner in which all claims for supplies delivered shall be
34 submitted, examined, approved and paid. The commissioner shall determine the amount of bond
35 or deposit and the character thereof which shall accompany bids or contracts.

36 5. The department of natural resources may, without the approval of the commissioner
37 of administration required pursuant to this section, enter into contracts of up to five hundred
38 thousand dollars to abate illegal waste tire sites pursuant to section 260.276 when the director
39 of the department determines that urgent action is needed to protect public health, safety, natural
40 resources or the environment. The department shall follow bidding procedures pursuant to this
41 section and may promulgate rules necessary to establish such procedures. Any rule or portion
42 of a rule, as that term is defined in section 536.010, that is created under the authority delegated
43 in this section shall become effective only if it complies with and is subject to all of the
44 provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
45 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536
46 to review, to delay the effective date or to disapprove and annul a rule are subsequently held
47 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after
48 August 28, 1999, shall be invalid and void.

49 6. The commissioner of administration and other agencies to which the state purchasing
50 law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of
51 the vendor makes sales at retail of tangible personal property or for the purpose of storage, use,
52 or consumption in this state but fails to collect and properly pay the tax as provided in chapter

53 144. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity
54 that is controlled by or is under common control with the vendor, whether through stock
55 ownership or otherwise.

34.042. 1. When the commissioner of administration determines that the use of
2 competitive bidding is either not practicable or not advantageous to the state, supplies may be
3 procured by competitive proposals. The commissioner shall state the reasons for such
4 determination, and a report containing those reasons shall be maintained with the vouchers or
5 files pertaining to such purchases. All purchases in excess of [five] **ten** thousand dollars,
6 **adjusted for inflation based on the dollar's value in 2013**, to be made under this section shall
7 be based on competitive proposals.

8 2. On any purchase where the estimated expenditure shall be [twenty-five] **one hundred**
9 thousand dollars or over, **adjusted for inflation based on the dollar's value in 2013**, the
10 commissioner of administration shall:

11 (1) Advertise for proposals in at least two daily newspapers of general circulation in such
12 places as are most likely to reach prospective offerors and may advertise in at least two weekly
13 minority newspapers and may provide such information through an electronic medium available
14 to the general public at least five days before proposals for such purchases are to be opened.
15 Other methods of advertisement, however, may be adopted by the commissioner of
16 administration when such other methods are deemed more advantageous for the supplies to be
17 purchased;

18 (2) Post notice of the proposed purchase; and

19 (3) Solicit proposals by mail or other reasonable method generally available to the public
20 from prospective offerors. All proposals for such supplies shall be mailed or delivered to the
21 office of the commissioner of administration so as to reach such office before the time set for
22 opening proposals. Proposals shall be opened in a manner to avoid disclosure of contents to
23 competing offerors during the process of negotiation.

24 3. The contract shall be let to the lowest and best offeror as determined by the evaluation
25 criteria established in the request for proposal and any subsequent negotiations conducted
26 pursuant to this subsection. In determining the lowest and best offeror, as provided in the request
27 for proposals and under rules promulgated by the commissioner of administration, negotiations
28 may be conducted with responsible offerors who submit proposals selected by the commissioner
29 of administration on the basis of reasonable criteria for the purpose of clarifying and assuring full
30 understanding of and responsiveness to the solicitation requirements. Those offerors shall be
31 accorded fair and equal treatment with respect to any opportunity for negotiation and subsequent
32 revision of proposals. Revisions may be permitted after submission and before award for the
33 purpose of obtaining best and final offers. In conducting negotiations there shall be no disclosure

34 of any information derived from proposals submitted by competing offerors. The commissioner
35 of administration shall have the right to reject any or all proposals and advertise for new
36 proposals or purchase the required supplies on the open market if they can be so purchased at a
37 better price.

38 4. The commissioner shall make available, upon request, to any members of the general
39 assembly, information pertaining to competitive proposals, including the names of bidders and
40 the amount of each bidder's offering for each contract.

34.044. 1. The commissioner of administration may waive the requirement of
2 competitive bids or proposals for supplies when the commissioner has determined in writing that
3 there is only a single feasible source for the supplies. Immediately upon discovering that other
4 feasible sources exist, the commissioner shall rescind the waiver and proceed to procure the
5 supplies through the competitive processes as described in this chapter. A single feasible source
6 exists when:

7 (1) Supplies are proprietary and only available from the manufacturer or a single
8 distributor; or

9 (2) Based on past procurement experience, it is determined that only one distributor
10 services the region in which the supplies are needed; or

11 (3) Supplies are available at a discount from a single distributor for a limited period of
12 time.

13 2. On any single feasible source purchase where the estimated expenditure shall be [five]
14 **ten** thousand dollars or over, **adjusted for inflation based on the dollar's value in 2013**, the
15 commissioner of administration shall post notice of the proposed purchase. Where the estimated
16 expenditure is [twenty-five] **one hundred** thousand dollars or over, **adjusted for inflation**
17 **based on the dollar's value in 2013**, the commissioner of administration shall also advertise the
18 commissioner's intent to make such purchase in at least two daily newspapers of general
19 circulation in such places as are most likely to reach prospective bidders or offerors and may
20 provide such information through an electronic medium available to the general public at least
21 five days before the contract is to be let. Other methods of advertisement, however, may be
22 adopted by the commissioner of administration when such other methods are deemed more
23 advantageous for the supplies to be purchased. The requirement for advertising may be waived,
24 if not feasible, due to the supplies being available at a discount for only a limited period of time.

34.047. Notwithstanding any provision in section 34.040, section 34.100, or any other
2 law to the contrary, departments shall have the authority to purchase products and services
3 related to information technology when the estimated expenditure of such purchase shall not
4 exceed seventy-five thousand dollars, the length of any contract or agreement does not exceed
5 twelve months, the department complies with the informal methods of procurement established

6 in section 34.040, and 1 CSR 40-1.050(1) for expenditures of less than [twenty-five] **one**
7 **hundred** thousand dollars, **adjusted for inflation based on the dollar's value in 2013**, and the
8 department posts notice of such proposed purchase on the online bidding/vendor registration
9 system maintained by the office of administration. For the purposes of this section, "information
10 technology" shall mean any computer or electronic information equipment or interconnected
11 system that is used in the acquisition, storage, manipulation, management, movement, control,
12 display, switching, interchange, transmission, or reception of information, including audio,
13 graphic, and text.

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